

CALVIN T. HAZELWOOD.

JANUARY 8, 1897.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HUTCHESON, from the Committee on Claims, submitted the following

REPORT.

[To accompany H. R. 9475.]

The Committee on Claims, to whom was referred the bill (H. R. 9475) for the relief of Calvin T. Hazelwood, have had the same under consideration and submit the following report:

This is a claim for losses by Indian depredations from the years 1866 to 1871, committed by the Kiowa and Comanche Indians in Texas.

The original claim was filed in the office of the Commissioner of Indian Affairs on January 8, 1872, for the sum of \$5,635, with evidence that clearly established the loss.

Upon an investigation by the Indian Office, the Commissioner of Indian Affairs recommended an allowance of \$2,940 in his report to the Secretary of the Interior, and on March 16, 1885, the Secretary of the Interior approved this report, and recommended the same to Congress for payment. (See Ex. Doc. 125, Forty-ninth Congress, first session, p. 64.)

The papers and the evidence that had been filed in the Indian Office by the claimant were sent to Congress with the report of the Secretary of the Interior and were there lost or mislaid.

Suit was instituted on this claim in the Court of Claims after the passage of the act of March 3, 1891, giving that court jurisdiction to inquire into and finally adjudicate this class of claims, and a call was made on the Indian Office and on the Clerk of the House of Representatives for the papers and evidence in the case; to which calls the Commissioner of Indian Affairs replied that the same had been sent to Congress, and the Clerk of the House of Representatives replied that the same came to the House and were referred to the Committee on Indian Affairs and could not be found.

A call was then made on the Commissioner of Indian Affairs for a copy of his report made on the case to the Secretary of the Interior, which was furnished by said Commissioner and filed in the court, and is as follows:

SEPTEMBER 2, 1873.

SIR: I have the honor to transmit herewith the claim of C. T. Hazelwood for \$5,625, the estimated value of 49 head of horses, alleged to have been taken by Kiowa and Comanche Indians from his ranch in the county of Palo Pinto, Tex.

The agent reports that the Indians in council say "they all had a hand in the depredation, as they were all on the warpath a portion of the time," but they refuse to make satisfaction.

The claimant avers that the horses were taken at different periods, intervening between August, 1866, and October, 1871.

Two witnesses, who were herders of the claimant, swear that 5 horses were taken in August, 1866; 12 in May, 1867; 6 in September, 1868; 11 in July, 1869; 13 in June, 1870, and 4 in October, 1871. This would make in the aggregate 51 horses lost, instead of 49.

The testimony of these witnesses is positive in its character, and in connection with the admissions of the Indians, is believed to be sufficient to prove the depredation.

As regards the value of the horses, the testimony is not satisfactory. Claimant values them at \$115 per head.

It is believed that \$60 per head would be nearer their true value, as there is no evidence to show that they differed from the prevailing mustang or pony breed in that country, making a total of \$2,940, for which amount I respectfully recommend the claim be allowed.

A portion of the claim for the depredations in 1866, 1867, and 1868 (loss of 23 horses), is barred by the seventeenth section of the act of June, 1834, not having been presented until January 8, 1872.

Very respectfully, your obedient servant,

EDW. P. SMITH, *Commissioner.*

The SECRETARY OF THE INTERIOR.

NOTE.—The bar mentioned in the above was removed by the act of March 3, 1891.

The case was then submitted to the court on the report of the Commissioner of Indian Affairs, and of the Secretary of the Interior, it being shown that the witnesses by whom the depredations had been proved were all dead and that it was impossible to produce other proof.

The court found, as a matter of law, that the report of the Commissioner of Indian Affairs and the report of the Secretary of the Interior were not competent evidence on which the court could act, and dismissed the case; and this left the claimant without any remedy at law.

There can be no doubt about the justice of the claim.

The loss of the papers and the evidence was in nowise through the fault or negligence of the claimant, and as his case is clearly proven, and the court has decided that the Indians who committed the depredations were in amity with the United States at the dates of the several depredations, and it further appearing that the claimant is now, and all his life has been, a citizen of the United States, the committee are of the opinion that he should be paid the sum he asks, viz, \$2,940, and therefore report the same favorably.

Your committee also find on examination that a number of claims proved up in precisely the same manner, and in which the evidence was not lost, but the original evidence was before the court, have been adjudicated and judgments rendered by the court in favor of the claimants, and the same have been paid; and hence that this claimant should be refused compensation for a claim of a similar nature when the loss of the papers was in nowise occasioned by his fault or neglect would be manifestly unjust.

It may not be amiss to remark that the court has decided that all cases filed in the Indian Office prior to March, 1885, and which had been proved up and recommended by the Secretary of the Interior for payment, were not preferred claims under the act of March 3, 1891, and hence had to be tried before the court as other cases which were not preferred.

Therefore the committee report the claim favorably.